

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the  
Determination of the Responsible  
Authority for Le Sueur County that  
certain data about Wayne A. Quiram  
are Accurate and/or Complete

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger on April 3, 2006 in the City of Le Center, Minnesota. The record closed at the conclusion of the hearing.

Brent Christian, Le Sueur County Attorney, 65 South Park Avenue, P.O. Box 156, Le Center, Minnesota 56057-0156, appeared on behalf of Le Sueur County. Wayne A. Quiram, 23342 German Lake Road, Cleveland, Minnesota 56017, appeared on his own behalf.

**STATEMENT OF THE ISSUE**

1. What items of data were challenged by Wayne Quiram in 2004?
2. What items of challenged data were data about Wayne Quiram?
3. Were such items of data were accurate and/or complete within the meaning of Minnesota Government Data Practices Act?<sup>[1]</sup>

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Wayne Quiram owns property located in Le Sueur County on German Lake.
2. While driving on County Road 12 to check on a public access at German Lake during the spring of 2002, Conservation Officer Joseph Frear stopped to talk with Mr. Quiram. Officer Frear noticed Mr. Quiram was filling a ditch and that there was some additional brush piled farther back from the ditch.

3. Officer Frear telephoned the Le Sueur County Planning and Zoning Office (Planning and Zoning) and left a message that he was concerned about Mr. Quiram filling in the ditch. He asked if Planning and Zoning would check on the brush pile.<sup>[2]</sup> Officer Frear was requesting information from the County so he could determine whether filling in this particular ditch was a violation that he needed to address.<sup>[3]</sup> Officer Frear did not receive a response from the County until after Mr. Quiram had contacted him at a later unspecified date.<sup>[4]</sup>

4. On May 6, 2002, Michelle Mettler, a zoning technician in the County Planning and Zoning Office, received Officer Frear's voice message.<sup>[5]</sup> She wrote a description of Officer Frear's message as "Blocking water w/ pile of 'sticks'" and noted that the pile was located in sections 32/33 at German Lake.<sup>[6]</sup> At the time, Mr. Quiram had requested re-zoning of some of the property he owned near German Lake, and the call raised a question about whether the brush pile was located on the property that was being considered for re-zoning.<sup>[7]</sup> Ms. Mettler checked with the County Auditor's office about the brush pile and found that the Auditor had already heard about Mr. Quiram's brush pile. She photographed the brush pile.<sup>[8]</sup>

5. Among the duties of the Planning and Zoning administrator and her assistant is to respond to inquiries about land uses, and to share information with others to ensure compliance with federal, state and local standards.<sup>[9]</sup>

6. On May 28, 2002, Ms. Mettler sent an e-mail to Leo Gettsfied, a regional officer with the Department of Natural Resources which read:

Wayne Quiram-also we have had complaints regarding a large pile of sticks and brush that Mr. Quiram is piling up. It is placed right in a runoff "ditch" to German Lake. This is not a County Ditch and the SWCD doesn't have any jurisdiction there. Do you have any suggestions or jurisdiction? I'll attempt to send you some photos of it.<sup>[10]</sup>

7. Kathy Brockway is the supervisor of the Le Sueur County Zoning and Planning Office.<sup>[11]</sup> She visited the Gene Lewis property with Leo Gettsfied in the spring of 2002.<sup>[12]</sup> She asked Leo Gettsfied if there was anything that could be done about a brush pile across the lake, referring to Mr. Quiram's property. At the time of this conversation, the Planning and Zoning Office was still investigating to determine if the brush pile was a violation.<sup>[13]</sup>

8. A photograph of the brush pile was displayed at a County Zoning and Planning meeting. Ms. Mettler does not recall if the e-mail was read at the meeting.

9. Ms. Mettler retained the printed e-mail as part of the zoning file because she believed the brush pile was within the area proposed for re-zoning

and because the Planning and Zoning Office does not throw out documents that may be relevant at a later date.

10. On April 27, 2002, the Planning and Zoning Commission approved Mr. Quiram's request to rezone, without including any condition concerning removal of the brush pile.<sup>[14]</sup>

11. Peggy Donovan, Personnel Coordinator for Le Sueur County, is the Responsible Authority for data under the Minnesota Government Data Practices Act.<sup>[15]</sup>

12. On July 14, 2004, Mr. Quiram asked the County by letter to correct data related to the brush pile.<sup>[16]</sup>

13. On July 27, 2004, Ms. Donovan advised Mr. Quiram that she did not find any data identified by Mr. Quiram incomplete or inaccurate.<sup>[17]</sup>

14. Mr. Quiram sent a series of letters to the Minnesota Department of Administration challenging the data maintained by the County.<sup>[18]</sup> Responding to these letters, the Department of Administration repeatedly advised Mr. Quiram regarding the information he needed to provide before his appeal could be accepted.<sup>[19]</sup> On August 18, 2004, the Department sent Mr. Quiram a letter informing him that appeals were made to the Commissioner of Administration and listing the requirements for an appeal. On September 27, 2004, the Department advised Mr. Quiram that it could not accept an appeal until after a determination by the Responsible Authority for Planning and Zoning. On December 17, 2004, the Department again advised Mr. Quiram of the requirements for submitting an appeal. On February 28, 2005, the Department advised Mr. Quiram that he had not filed an appeal. On March 23, 2005, the Department again advised Mr. Quiram of the documents needed for an appeal.

15. In a letter to the Commissioner of Administration dated May 1, 2005, Mr. Quiram again appealed the accuracy and/or completeness of the County's data.<sup>[20]</sup>

16. On May 12, 2005, the Department notified Mr. Quiram it would conditionally accept the appeal contingent upon the receipt of additional information.<sup>[21]</sup> The Department continued to request additional information from Mr. Quiram including: a copy of any minutes containing the data listed in Mr. Quiram's July 14, 2005, data challenge to Peggy Donovan, a copy of Peggy Donovan's letter of June 28, 2004, and a copy of the June 1 documents referred to in Mr. Quiram's July 14, 2005, data challenge.<sup>[22]</sup>

17. On June 10, 2005, the Department received a copy of its May 12, 2005 letter with handwritten notations by Mr. Quiram. On August 18, 2005, the Department advised Mr. Quiram that his appeal would be scheduled for hearing.

18. The Department issued a Notice of and Order for Hearing on November 1, 2005.

19. The Administrative Law Judge reviewed the documents forwarded by the Department and could not determine what data was being specifically challenged except for the e-mail dated May 28, 2002.<sup>[23]</sup> In a letter dated January 5, 2006, the Administrative Law Judge requested that Mr. Quiram clarify precisely what data he was challenging. Mr. Quiram responded by letter dated January 13, 2006. After receiving Mr. Quiram's response, the County filed a motion to dismiss. Mr. Quiram did not respond.<sup>[24]</sup>

20. On February 16, 2006, the Administrative Law Judge granted the County's Motion to Dismiss in part and identified the sole remaining issue as whether the statement in the e-mail dated May 28, 2002, that "we have had complaints regarding a large pile of sticks and brush that Mr. Quiram is piling up" was an accurate statement.<sup>[25]</sup>

21. The e-mail message dated May 28, 2002, contained data about Wayne Quiram.

22. The e-mail message was accurate. The County did receive "complaints" about Mr. Quiram's brush pile. The e-mail message was complete. It included the relevant information obtained from Officer Frear's message to Planning and Zoning.

23. Planning and Zoning had a duty to investigate a report of brush piles in a ditch to determine if there was a violation.<sup>[26]</sup> As part of that investigation, Planning and Zoning personnel were reasonably entitled to discuss the brush pile with others as part of their investigation to determine if the pile was a violation of law.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. Minnesota law gives the Commissioner of Administration and the Administrative Law Judge authority to consider and rule on the issues in this contested case proceeding.<sup>[27]</sup>

2. The Notice of and Order for Hearing was proper in all respects, and the Department of Administration has complied with all substantive and procedural requirements for maintaining this administrative contested case proceeding.

3. The Le Sueur Planning and Zoning is a political subdivision of the State and is subject to the provisions of the Minnesota Government Data Practices Act.<sup>[28]</sup>

4. Wayne Quiram is the subject of data on individuals that is being maintained by Le Sueur County.<sup>[29]</sup>

5. The Data Practices Act defines “data on individuals” as:

all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.<sup>[30]</sup>

6. The Data Practices Act defines “Individual” in part as follows:

“Individual” means a natural person. In the case of a minor or an individual adjudged mentally incompetent, “individual” includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian.<sup>[31]</sup>

7. The Data Practices Act provides that individual subjects of data may contest the accuracy or completeness of data relating to them with the public authority responsible for maintaining that data. If the responsible authority declines to correct data about which there is a dispute, individuals may then appeal that decision in a contested case proceeding under the Administrative Procedure Act.<sup>[32]</sup>

8. Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by the state agency or political subdivision.<sup>[33]</sup>

9. Under the Data Practices Act, “accurate” means that the data in question is reasonably correct and free from error.<sup>[34]</sup>

10. Under the Data Practices Act, “complete” means that the data in question reasonably reflects the history of an individual’s transactions with the particular entity. Omissions in an individual’s history that placed the individual in a false light shall not be permitted.<sup>[35]</sup>

11. The individual filing an appeal has the burden of proving by a preponderance of the evidence that the data is not accurate or complete.<sup>[36]</sup>

12. The e-mail from Ms. Metter challenged by Mr. Quiram was reasonably correct and free from error and did reasonably reflect the history of the investigation about the filling of a ditch on Mr. Quiram’s property.

13. Mr. Quiram has failed to prove by a preponderance of the evidence that the e-mail is not accurate or complete.

14. The Order Granting Motion to Dismiss in Part and Scheduling Remaining Issue for Hearing, dated February 16, 2006, is reaffirmed and incorporated by reference.

15. The Memorandum that follows explains the reasons for these Conclusions and is incorporated into the Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED: that the Commissioner of Administration issue an Order denying the appeal of Wayne Quiram from the determination of the responsible authority for Le Sueur County that certain data are not accurate or complete.

Dated this 4th day of May, 2006.

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: 3 tapes, not transcribed

### **NOTICE**

This report is a recommendation only, not a final decision. The Commissioner of Administration will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's final decision shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present arguments to the Commissioner. Parties should contact Dana B. Badgerow, Commissioner of Administration, 50 Sherburne Avenue, St. Paul, MN 55155, telephone (651) 201-2555, to find out how to file exceptions or present argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties

and the Administrative Law Judge of the date on which the record closes. Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

## MEMORANDUM

Under the Minnesota Data Practices Act an individual has the right to contest the accuracy or completeness of data being maintained by a state agency. Mr. Quiram is contesting the accuracy of an e-mail about him maintained by Le Sueur County. "Accurate" is defined in rule as meaning that "the data in question is reasonably correct and free from error." Conclusions and opinions may be challenged as well as facts. Mr. Quiram has the burden of proof to show that the data is not accurate.

Mr. Quiram challenges the accuracy of an e-mail written by Michelle Mettler, a Zoning Technician working in the Planning and Zoning Office of Le Sueur County. He asserts that the reference to "complaints" is inaccurate because the County never received a complaint and because the e-mail incorrectly identifies sticks and brush being piled up in a runoff ditch to German Lake.

Conservation Officer Frear observed the material piled in the ditch and asked County Planning and Zoning if this was a violation that he should be concerned about. Officer Frear's query was appropriately characterized by the County as a "complaint."

The Data Practices Act cannot be used to rewrite data that the subject simply disagrees with as long as it is reasonably accurate. The County's data is reasonably accurate and complete. Mr. Quiram has not proven that the data is inaccurate and/or incomplete.

Mr. Quiram also contends that Ms. Mettler and Ms. Brockway were required to know the law, and, in particular, to know that the brush pile did not violate any federal, state or local law or regulation and should have made no notation or inquired further. This is illogical. Until the location of the brush pile and the governing standards were checked, no such determination could be made. Although public employees must be familiar with the legal standards they apply, they are not expected to immediately reach conclusions without checking the facts and law as they apply to the particular inquiry.

Mr. Quiram also contends that a "complaint" is a specific allegation that a law was violated. But that is too technical an interpretation. Although a "complaint" includes formal charges or accusations, the term also refers to more general expressions of concern or dissatisfaction.<sup>[37]</sup> Officer Frear's call can be fairly characterized as a "complaint." It is too technical a point to quibble over whether Ms. Mettler's use of the plural "complaints" was inaccurate. She received a call about the brush pile, recorded the call, and initiated an inquiry. Her e-mail message was substantially correct.

The Department of Administration afforded Mr. Quiram many opportunities to clarify his challenge to any data related to the brush pile found by Officer Frear



in 2002. Mr. Quiram's challenge borders on meritless since he understood that questions about his brush pile had in fact been raised with the County. All of the other alleged violations were either resolved in the County's favor prior to issuing the Notice of and Order for Hearing or disposed of by this case.

For the reasons discussed above, the Administrative Law Judge recommends that the Commissioner deny and dismiss Mr. Quiram's appeal.

B.J.H.

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<sup>[1]</sup> Minn. Stat. §§ 13.01-.90. (Unless otherwise specified, all references to Minnesota Statutes are to the 2004 edition, and all references to Minnesota Rules are to the 2005 edition.)

<sup>[2]</sup> Testimony of Officer Joseph Frear.

<sup>[3]</sup> *Id.*

<sup>[4]</sup> *Id.*

<sup>[5]</sup> Testimony of Michelle Mettler; Ex. 6.

<sup>[6]</sup> Ex. 2.

<sup>[7]</sup> Testimony of Kathy Brockway, Testimony of M. Mettler; Exs. 9, 10.

<sup>[8]</sup> Testimony of M. Mettler.

<sup>[9]</sup> Exs. 3, 4, 6.

<sup>[10]</sup> Ex. 1.

<sup>[11]</sup> Testimony of Kathy Brockway.

<sup>[12]</sup> Testimony of Gene Lewis, Testimony of K. Brockway.

<sup>[13]</sup> *Id.*

<sup>[14]</sup> Ex. 9.

<sup>[15]</sup> Ex. 10 B to the Notice of and Order for Hearing, Letter from Peggy Donovan to Wayne Quiram, July 27, 2004.

<sup>[16]</sup> *Id.*; Testimony of Wayne Quiram.

<sup>[17]</sup> *Id.*

<sup>[18]</sup> See Exs. 1, 3, 5, 7, 8 and 10, to the Notice of and Order for Hearing, Letters from Wayne Quiram dated July 19, 2004 (receipt date), September 17, 2004, December 1, 2004, December 23, 2004 (receipt date), February 2, 2005 and March 11, 2005.

<sup>[19]</sup> Exs. 2,4,6,9 and 11 to the Notice of and Order for Hearing, Letters from Katherine A. Engler to Wayne Quiram dated August 18, 2004, September 27, 2004, December 17, 2004, February 28, 2005 and March 23, 2005.

<sup>[20]</sup> Ex. 12 to Notice of and Order for Hearing, Letter from W. Quiram to K. Engler.

<sup>[21]</sup> Ex. 13 to Notice of and Order for Hearing, Letter of K. Engler to W. Quiram, May 12, 2005.

<sup>[22]</sup> Exs. 15, 17, 18 and 20, Letters from K. Engler to W. Quiram, June 14, 2005, July 11, 2005, August 18, 2005 and September 9, 2005.

<sup>[23]</sup> See Finding No. 6, *supra*.

<sup>[24]</sup> As noted in the February 16, 2006, Order granting the County's motion to dismiss in part, Mr. Quiram filed a Notice of Appearance indicating that he would be represented by attorney Jerry Strauss. Mr. Strauss did not respond to correspondence from the Administrative Law Judge asking that he clarify his status, nor did he respond on Mr. Quiram's behalf to the County's Motion to Dismiss.

<sup>[25]</sup> February 16, 2006 Order.

<sup>[26]</sup> Exs. 3, 4 and 6.

<sup>[27]</sup> Minn. Stat. §§ 13.04, Subd. 4 and 14.50 and Minn. Rule part 1205.1600.

<sup>[28]</sup> Minn. Stat. §§ 13.01, subd. 1 and 13.02, subd. 11.

<sup>[29]</sup> Minn. Stat. § 13.02, subd. 5.

- [\[30\]](#) Minn. Stat. § 13.02, subd. 5.
- [\[31\]](#) Minn. Stat. § 13.02, subd. 8.
- [\[32\]](#) Minn. Stat. § 13.04, subd. 4.
- [\[33\]](#) Minn. Stat. § 13.04, subd. 4.
- [\[34\]](#) Minn. R. 1205.1500, subp. 2A.
- [\[35\]](#) Minn. R. 1205.1500, subp. 2B.
- [\[36\]](#) Minn. R. 1400.7300, subp. 5.
- [\[37\]](#) *American Heritage College Dictionary*, 3rd ed., 1997.